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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Section 90.135(a)(8)  
of the Commission's Rules and  
Regulations Concerning Modification  
of Licenses for Paging Operations

PR 92-78  
RM-7749

ORIGINAL  
FILE

To: The Commission

REPLY COMMENTS  
OF THE  
ASSOCIATION FOR PRIVATE CARRIER PAGING SECTION  
OF THE  
NATIONAL ASSOCIATION OF BUSINESS  
AND EDUCATIONAL RADIO, INC.

The Association for Private Carrier Paging Section of the National Association of Business and Educational Radio, Inc. ("APCP") by its attorneys, respectfully submits, pursuant to Section 1.405(b) of the Commission's Rules, 47 C.F.R. §1.405(b), its Reply Comments in response to the Comments filed concerning the Petition for Rule Making filed by APCP which seeks to amend Section 90.135(a)(8) of the Commission's Rules to exempt Private Carrier Paging ("PCP") systems operating on paging-only frequencies from the license modification requirement contained in Section 90.135(a)(8).

The comments filed in response to APCP's Petition overwhelmingly support the exemption of PCP systems from Section 90.135(a)(8). O'Brien Communications, Inc. ("OCI") states that the rule "serves no useful purpose with respect to PCP license operations",<sup>1</sup> would "overwhelm the Commission's limited resources",<sup>2</sup>

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<sup>1</sup>OCI Comments at 3.

and would "unduly burden PCP licensees."<sup>3</sup> Similarly, Paging Network, Inc. ("PageNet") notes that such an interpretation of Section 90.135(a)(8) "represents a cost to the industry and administrative burden on the Commission of inordinate proportions."<sup>4</sup> PageNet recognizes that a successful PCP operator attempting to comply with the rule may be forced to file an application each week, and possibly every day.<sup>5</sup> Celpage, Inc. ("Celpage") properly states that compliance "could well require the full-time attention of a conscientious licensee."<sup>6</sup>

When Section 90.135(a)(8) was enacted in 1986 as part of the Commission's action in PR Docket No. 83-737, the Commission stated that it believed that a rule was necessary to require license modifications when paging units increased on a system. The Commission sought a number which reflected when additional paging units would mark a change in spectrum utilization by the system. The fifty pager threshold was believed at the time by the Commission to be a "... reasonable benchmark for changes that could affect a frequency recommendation."<sup>7</sup>

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<sup>2</sup>Id.

<sup>3</sup>Id.

<sup>4</sup>PageNet Comments at 3.

<sup>5</sup>Id.

<sup>6</sup>Celpage Comments at 3.

<sup>7</sup>Memorandum Opinion and Order, PR Docket No. 83-737, 61 RR 2d 149 (1986) at para. 32.

Although the fifty pager benchmark may be a significant difference on a single user paging system or a system which employs both paging and two-way operations, an increase in fifty pagers by a private carrier paging ("PCP") system does not significantly impact the utilization of the channel. Based upon the Comments filed, it is clear that Section 90.135(a)(8) should be amended.<sup>8</sup> Compliance with the rule by PCP operators would be costly for the Commission and the licensees, with no benefit for the coordination process.

Finally, each of the commenting parties states that Section 90.179(e) of the Commission's Rules does not apply to certain PCP systems. PageNet states that the rule does not apply to systems which were defined in General Docket No. 80-183 and the "Millicom" case as systems which are not "shared-use" systems.<sup>9</sup> Thus, PageNet believes that the rule does not apply to systems which use a "store-forward" device, which prohibits direct user control of the base station transmitter. OCI states that Section 90.490(c) of the Commission's Rules clarifies that "non-shared" systems are not subject to the reporting requirements.<sup>10</sup>

APCP has reviewed each of the arguments raised by the Commentors,<sup>11</sup> and APCP believes that each has significant merit.

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<sup>8</sup>Suggested amended language is attached hereto.

<sup>9</sup>PageNet Comments at 4. See also, Celpage Comments at 4-6.

<sup>10</sup>OCI Comments at 6.

<sup>11</sup>OCI, Celpage and PageNet are each members of the APCP Council, and have actively participated in discussions concerning applicability of this rule section as well as effective means by

The decision by the United States Court of Appeals for the District of Columbia Circuit clearly states that a PCP System with a "store-forward" device is not a "shared" system.<sup>12</sup> In the Millicom case, the Court found that customers of PCP systems with a "store-forward" device could not "operate or control" the PCP base station, and therefore the system was not "shared by authorized users". Thus, the beginning language of Section 90.179 would exclude "store-forward" paging systems from its purview.

A review of the creation of Section 90.179(e) in PR Docket No. 83-737 shows that the Commission was attempting to create a means by which private carriers could account for the spectrum the private carrier was actually using, without the need to individually license each user. The Commission's goal was to prevent "paper loading".<sup>13</sup> However, since in the same document the Commission created the "50 pager rule", which created a means for paging systems to account for spectrum utilization,<sup>14</sup> the Commission inadvertently omitted a reference in the "user list rule" that would have stated that the "user list rule" only applied to two-way private carriers.

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which paging channels can be coordinated. These Reply Comments reflect the results of a series of meetings between members of the Council in an effort to provide the Commission with sufficient guidance in regulating the PCP industry.

<sup>12</sup>Telocator Network of America v. FCC, 761 F.2d 763 (1985).

<sup>13</sup>Memorandum Opinion and Order, PR Docket No. 83-737, 61 RR 2d 148 (1986) at para. 35-42.

<sup>14</sup>Id. at para. 28-32.

It has been the PCP industry's consistent interpretation that the rule does not apply. As noted by the Commentors, if Section 90.179(e) was applied to PCP system, there would be reams of paper<sup>15</sup> submitted to the frequency advisory committee. NABER as the frequency advisory committee does not need this information for proper coordination of paging frequencies, and such a result is undesirable.<sup>16</sup> Therefore, APCP and NABER request that the Commission clarify that Section 90.179(e) does not apply to PCP systems.

APCP recognizes, however, that modification of Section 90.135 and clarification of Section 90.179(e) may result in the inability of the frequency coordinator and the Commission to be able to determine the approximate utilization of the channel without the time consuming process of sending a query letter to each user on each paging frequency every time an application is received. Therefore, APCP suggests that the Commission create a new rule section in Subpart P of Part 90 that would require a PCP System to certify to the number of units on the system, as well as a breakdown as to the categories of pagers (i.e., tone, tone/voice,

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<sup>15</sup>PageNet notes that a single PCP system may be required to file a document which would be the size of the Fredericksburg, Virginia telephone book. PageNet Comments at n. 2.

<sup>16</sup>Unlike two-way private carriers, there is little need to review the eligibility of users as a result of the Commission's action in PR Docket No. 89-45, expanding PCP eligibility. Further, in order for "paper loading" to be significant enough on a paging channel to affect the frequency coordination process, the exaggerated loading would need to number in the thousands. In such an event, frequency monitoring by an applicant for the frequency should provide sufficient evidence to demonstrate that an additional system can be coordinated on the frequency.

digital, etc.) being used.<sup>17</sup> This will provide sufficient, timely information to the frequency advisory committee to make routine frequency recommendations.<sup>18</sup>

### III. CONCLUSION

WHEREFORE, the Association for Private Carrier Paging Section of the National Association of Business and Educational Radio, Inc. respectfully requests that the Commission adopt a Notice of Proposed Rule Making, amend Section 90.135(a)(8) and clarify Section 90.179(e) of its rules consistent with APCP's Petition and Reply Comments.

Respectfully submitted,

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<sup>17</sup>Proposed language for the rule is attached hereto.

<sup>18</sup>Additionally, the clarification that Section 90.179(e) does not apply to PCP systems may result in the need for a rule section that specifically authorizes PCP operations below 800 MHz. Therefore, APCP suggests that the Commission further amend Subpart P to specify that private carrier paging operations are permitted on Business Radio frequencies below 800 MHz.

**Proposed Rule Section**

47 C.F.R. §90.493 - Licensees of Private Carrier Paging systems shall submit to the applicable coordinator eight (8) months after grant, and annually thereafter, an updated list of the number of paging units in service by type (i.e. tone only, tone/voice, digital, etc.) which shall be certified by the licensee.

47 C.F.R. §90.135(a)(8) - Change by 50 or more units in the number of paging receivers, except private carrier paging systems on paging-only frequencies.

**CERTIFICATE OF SERVICE**

I, Ruth A. Buchanan, a secretary in the law offices of Meyer, Faller, Weisman & Greenburg, P. C. hereby certify that I have on this 8th day of August, 1991 sent by First Class United States Mail, postage prepaid, a copy of the foregoing "Reply" to the following:

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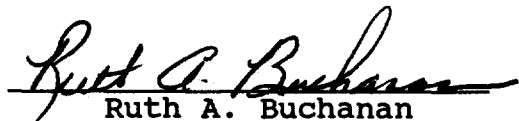
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